RECENT IMPORTANT DECISIONS

BAILMENT — ARTISAN'S LIEN — SELLING AUTOMOBILE TIRES. — Appellee sought to enforce a lien on three touring cars for the price of eight casings sold and fitted on them by him. No charge was made for taking off the old casings and putting on the new ones. The lien was based on the statute giving a lien to wheelwrights who performed work and labor on carriages, wagons, farm implements, and other articles for such work and labor, and for all materials furnished by them and used in such product or repairs. ACTS OF ARKANSAS, 1903, p. 260. *Held,* (one judge dissenting), the taking off of old casings and putting on new ones is merely an incident of the business of selling tires not constituting plaintiff a "wheelwright". *Weber Implement and Automobile Co.* v. *Pearson,* (Ark., 1918), 200 S. W. 273.

An automobile repairer is a wheelwright within the meaning of the statute. *Shelton* v. *Little Rock Auto Co.,* 103 Ark. 142. At common law every bailee or mechanic who by his labor and skill imparts an additional value to the goods has a lien upon the property for his reasonable charges. "This includes all such mechanics, tradesmen and laborers as receive property for the purpose of repairing or otherwise improving its condition." *Grinnell* v. *Cook,* 3 Hill (N. Y.) 485. The objection that the garage is the modern substitute of the ancient livery stable and that therefore the owner has the right reserved to use the machine at his pleasure thereby disturbing continuous possession which is essential to a lien at common law is wiped out by many of the statutes. *Smith* v. *O'Brien,* 46 Misc. (N. Y.) 325. By these statutes continuous possession is not necessary to preserve the lien. *Lowe Auto. Co.* v. *Winkler,* 127 Ark. 433. The purpose of the statutes seems to be to extend the lien to those mechanics who had no lien at common law and they are therefore an extension of the common law doctrine, and not in derogation of it, which should warrant a liberal interpretation. In *Kansas City Automobile School Co.* v. *Holcker-Elberg Mfg. Co.,* (Mo. App., 1906), 182 S. W. 759, it was held the defendant was entitled to a lien for a body sold and fitted on the framework by him. The very question decided in the principal case arose in *Courts* v. *Clark,* 84 Ore. 179. The court held one who sold tires and put them on an automobile was an automobile repairer within the terms of the statute. The theory of the principal case that the work performed must be such as requires a skilled mechanic is technical and seems out of harmony with the spirit of the statutes.

BANKRUPTCY — FALSE REPRESENTATIONS TO COMMERCIAL AGENCY AS BAR TO DISCHARGE.—Plaintiff opposed the defendants' discharge in bankruptcy because they had given a commercial agency a materially false financial statement in writing. Three months thereafter plaintiff, before extending credit, had asked the agency for a report on defendants and relied upon the false statement which it had supplied. The printed form upon which the statement was written recited that it was made "as a basis of credit", but the re-

port had not been procured at the request of any creditor nor was there any apparent purpose of getting goods from any particular dealer on the strength of it. *Held,* that the discharge could not be denied. *J. W. Ould Co.* v. *Davis et al.,* (C. C. A., 4th Circ., 1917), 246 Fed. 228.

Sec. 14b of the BANKRUPTCY ACT, as amended in 1910, reads: "The judge shall * * * discharge the applicant unless he has * * * (3) obtained money or property on credit upon a materially false statement in writing made by him to any person or his representative for the purpose of obtaining credit from such person." As applied to materially false statements in writing made to a commercial agency, there has been some conflict of opinion, although all of the cases may perhaps be distinguished on their facts. Where a discharge has been denied, there has generally been shown a clear intention to defraud; while in the cases that have allowed a discharge, there has been no such intention apparent. Judged by this standard the principal case is unexceptional, since the words of the printed form can hardly establish any definite intention to defraud. The court's opinion, however, sets up no such distinction. The intention of Congress at the time the amendment was passed is sought in the report of the Judiciary Committee of the Senate. The House of Representatives had passed an amendment which clearly denied discharge in case the bankrupt had made to a commercial agency materially false statements which were relied on by the creditor. As the Senate Committee considered this too harsh, the present provision was substituted. In its report the committee says, "It is a sufficient ground of opposition to discharge that the bankrupt has obtained property from a creditor by a materially false statement in writing *where that statement was specifically asked for by the creditor or the creditor's representative.*" On this account the court in the principal case finds itself unable to construe § 14b (3) so as to cover "general statements to mercantile agencies, *not specifically asked for by prospective customers.*" *In re Russell,* 176 Fed. 253; *In re Zoffer,* 211 Fed. 936. This view, then, would refuse a discharge only when the statements had been asked for by the commercial agency as the actual representative of the objecting creditor; if such fact appeared, however, the discharge would be denied even though the fact of the request had been unknown to the bankrupt and even though he may not have had any specific intention to defraud. *In re Carton & Co.,* 148 Fed. 63. On the other hand, in cases where a false statement is given to a commercial agency which is not at the time acting as the representative of a prospective creditor, a discharge is allowed even though there is an intention to defraud generally, and logically from the words of the committee, a discharge should be allowed even if there is an intention to defraud a particular person. Opinions based on a literal interpretation of the statute—a second view—consider the 1910 amendment as broadening the scope of the previous provision which denied discharge if the bankrupt had "obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit." *In re Simon,* 201 Fed. 1004; *contra, In re Pinsker,* 25 Am. B. R. 494. Under this provision some courts had denied discharge on the ground that the commercial agency was the agent of the

creditor; since 1910, they consider the addition of the words "or representative" as a direct legislative sanction of that view. *In re Kyte,* 174 Fed. 867; *In re Cloutier Bros.,* 228 Fed. 569. A third view makes discharge depend on whether the bankrupt makes the commercial agency his agent for circulating the false report. *In re Dresser,* 146 Fed. 383; *In re Pincus,* 147 Fed. 621; *In re Augspurger,* 181 Fed. 174; *In re Foster,* 186 Fed. 254; *Novick* v. *Reed,* 192 Fed. 20; *In re Haimowich,* 232 Fed. 378; *Haimowich* v. *Mandel,* 243 Fed. 338. This theory alone can account for the denial of a discharge where the creditor was not, at the time the false statement was made, a subscriber to the commercial agency.

BILLS AND NOTES—ACCEPTANCE BY TELEGRAPH—SUFFICIENCY.—An intending purchaser of a draft drawn upon defendant bank, sent a telegram to the defendant bank asking if it would *pay* a draft of a certain description to which the defendant replied, also by telegram, "the draft is *good.*" The draft was assigned to the plaintiff who now sues defendant on its alleged acceptance. *Held,* the above answer was not an acceptance nor an agreement to accept. *Colcord* v. *Banco de Tamaulipas,* (Sup. Ct., 1918), 168 N. Y. S. 710.

The drawee of a bank check cannot be held liable upon a claimed contract of acceptance external to the bill; unless the language used clearly and unequivocally imports an absolute promise to pay. *First Nat. Bank of Atchison* v. *Commercial Savings Bank,* 74 Kan. 606. It is not disputed that a valid acceptance of commercial paper may be made by telegraph. *Whilden* v. *Merchants and Planters Nat. Bank,* 64 Ala. 1; *Coffman* v. *Campbell and Co.,* 87 Ill. 98; *Garrettson* v. *North Atchison Bank,* 39 Fed. 163. The answer "Yes" to an inquiry whether checks were good, was held not to constitute an acceptance in *Kahn* v. *Walton,* 46 Ohio St. 195. In case of *Meyers* v. *The Union Nat. Bank,* 27 Ill. App. 254, in response to an inquiry whether checks would be paid if presented on a certain date, the answer was, "Drafts named are good *now.*" The court held that here was no acceptance and in so deciding placed much emphasis on the use of the word "now." But in *Garrettson* v. *North Atchison Bank* (*supra*) a telegraphic response "Tate is good. Send on your paper" in answer to telegram asking a bank if it would pay it was held to be an acceptance on the ground that it could not be supposed that the bank intended to return an ambiguous answer for purpose of misleading the party asking the question and held that if the answer were limited to the words, "Tate is good" there would be grounds for holding that the bank intended an affirmative answer to the categorical question. We have then only the *dictum* of the above case to oppose the principal case in its decision, but the reasoning of the Garrettson case appears to be the most logical, since the inquiry was not as to the validity of the draft or as to the sufficiency of the account of the depositor.

CARRIERS—CARRIAGE OF PASSENGERS — INITIAL CARRIER — CONNECTIONS.—The plaintiffs in error, as receivers, through their agent sold decedent, Barber, a two-coupon ticket from Toledo to Piqua, *via* their own lines, and from